

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,
v.
FRANCISCO ALCARAZ,

Case No. 2:13-CR-189-KJD-CWH

ORDER

FRANCISCO ALCARAZ,

Defendant.

Before the Court is the Government's Motion in Limine to Exclude Introduction of Alleged Self-Defense as it Relates to Counts I and II of the Superseding Indictment (#131). Defendant has responded (#145) and no reply is required.

I. Legal Standard

Pre-trial exclusion of evidence relating to affirmative defenses unsupported by sufficient offers of proof or precluded as a matter of law is proper. United States v. Kinslow, 860 F.2d 963, 966 (9th Cir. 1988). Self-defense is available as a defense in felon in possession cases. United States v. Gomez, 92 F.3d 770, 775 (9th Cir. 1996). A defendant is entitled to a self-defense instruction where “there is any foundation in the evidence, even though the evidence may be weak, insufficient, inconsistent, or of doubtful credibility” but “a mere scintilla of evidence . . . is not sufficient.” United States v. Wofford, 122 F.3d 787, 789 (9th Cir. 1997), as amended (Aug. 21, 1997) (internal citation and quotations omitted).

The four elements of the defense are that Defendant: 1) was under unlawful and present

1 threat of death or serious bodily injury; 2) did not recklessly place himself in a situation where he
 2 would be forced to engage in criminal conduct; 3) had no reasonable legal alternative; and 4)
 3 there was a direct causal relationship between the criminal action and the avoidance of the
 4 threatened harm. Id. at 789-90.

5 To show that no reasonable legal alternative existed, a defendant “must show that he
 6 actually tried the alternative or had no time to try it, or that a history of futile attempts revealed
 7 the illusionary benefits of the alternatives” United States v. Lemon, 824 F.2d 763, 765 (9th Cir.
 8 1987). In felon-in-possession cases, defendants are “uniformly require[d] . . . to seek aid from
 9 law enforcement before taking matters into [their] own hands.” Wofford, 122 F.3d at 791.

10 **II. Analysis**

11 Here, even if the Defendant were to offer credible testimony as to the events alleged in
 12 his response, there is no legal basis for allowing evidence of this defense to be presented to the
 13 jury. First, Defendant recklessly placed himself in a situation where he would be forced to
 14 engage in criminal conduct. Specifically, Defendant observed two individuals fighting on the
 15 ground, one of whom had a gun. Knowing he was a felon, Defendant proceeded to involve
 16 himself in the fight. When one of the individuals pointed a gun at Defendant, instead of
 17 retreating, Defendant persisted, ultimately ending with his possession of the firearm. However
 18 the altercation ended, Defendant was at minimum reckless in placing himself in a situation where
 19 he would be forced to engage in criminal conduct.

20 Further, Defendant has utterly failed to show that he had no reasonable legal alternative.
 21 First, Defendant failed to seek aid from law enforcement by calling the police regarding the
 22 fight. This action is specifically required within this Circuit as noted above. Secondly, Defendant
 23 had virtually unlimited legal alternatives, including taking no action whatever. Defendant failed
 24 to take advantage of the multiple legal alternatives available to him.

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1 **III. Conclusion**

2 For the above reasons, as a matter of law, Defendant has failed to provide sufficient
3 support for a theory of self-defense. Accordingly, Defendant is precluded from raising this
4 defense at trial, and no jury instruction regarding self-defense will be given. The Government's
5 Motion (#131) is **HEREBY GRANTED**.

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7 DATED this 9th day of February, 2015.



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Kent J. Dawson
10 United States District Judge

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